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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael Abraham Farr,

10 Petitioner,

11 v.

12 Bonnie Jeanene Kendrick,

13 Respondent.
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No. CV-19-08127-PCT-DWL

ORDER

15 On May 2, 2019, Petitioner Michael Abraham Farr (“Father”) filed a motion entitled
16 “Ex Parte Motion for Expedited Hearing and an Order for the Children to Remain in the
17 State of Arizona.” (Doc. 7.) Among other things, this motion sought emergency injunctive
18 relief against Respondent Bonnie Jeanene Kendrick (“Mother”). (*Id.*)

19 On May 3, 2019, the Court issued an order denying Father’s motion. (Doc. 9.) This
20 order explained that the Court was construing Father’s motion as a request for a temporary
21 restraining order (“TRO”) and that Father hadn’t established an entitlement to a TRO under
22 the rigorous standards governing such requests. (*Id.* at 2.) Specifically, the order
23 concluded that (1) Father hadn’t demonstrated a likelihood of success on the merits of his
24 ICARA claim because the materials attached to the petition suggest the children may be
25 exposed to a grave risk of physical or psychological harm, or otherwise placed in an
26 intolerable situation, if returned to Mexico, and (2) Father hadn’t shown a likelihood of
27 irreparable harm in the absence of a TRO because the petition was filed more than eight
28 months after the children were moved to Arizona and Father hadn’t presented any argument

1 or evidence that Mother is likely to flee from the United States, taking the children with
2 her, in the absence of a TRO. (*Id.* at 2-4.)

3 Now pending before the Court is Father's "Ex Parte Motion for an order for the
4 Children to Remain in the State of Arizona," which was filed on May 4, 2019. (Doc. 10.)
5 This motion reasserts the request for emergency injunctive relief that the Court denied in
6 its May 3, 2019 order. In apparent response to the Court's earlier analysis of the likelihood-
7 of-success factor, the motion states that "[o]n June 28, 2018, the Attorney General's office
8 in Playa del Carmen, Quintana Roo, Mexico ordered that K.M.K.F be returned to Father's
9 custody after reviewing psychological exam results of Father, Mother and K.M.K.F and
10 determining that Father is not a generator of violence and K.M.K.F is not a receiver of
11 violence. The order also stated that Mother was misusing a protective order she had
12 requested in order to prevent Father from seeing their minor children." (*Id.* ¶ 13.) And in
13 apparent response to the Court's earlier analysis of the irreparable-harm factor, the motion
14 states that one of Father's relatives has "provided financial assistance to Mother and made
15 false statements to the U.S. Consulate in order to obtain passports for E.G.F. and E.C.F.
16 which allowed Mother to leave Mexico. [This relative] maintains a residence in
17 Switzerland. He also travels to Africa on a frequent basis. Father's concern is that once
18 [this relative] and Mother receive notice of Father's Petition, [this relative] will arrange for
19 transportation of Mother, E.G.F. and E.C.F. to Switzerland or Africa." (*Id.* ¶ 23.) The
20 motion also states that the eight-month delay in filing suit can be explained by Father's
21 unsuccessful attempts to secure a pro bono attorney through the State Department's
22 attorney referral network. (*Id.* ¶ 24.)

23 Father's motion will be denied. Although the Court appreciates Father's attempt to
24 bring this additional information to its attention, the new information could have been
25 raised earlier. *See* LRCiv 7.2(g)(1) ("The Court will ordinarily deny a motion for
26 reconsideration of an Order absent a showing of manifest error or a showing of new facts
27 or legal authority that could not have been brought to its attention earlier with reasonable
28 diligence.").

1 Additionally, on the merits, the new information doesn't alter the conclusions
2 contained in the May 3 order. Notably, the motion doesn't allege that Mother (or the
3 relative discussed in the motion) has ever threatened to move the children to Switzerland
4 or Africa in response by an effort by Father to assert his custodial rights. Instead, it merely
5 raises the theoretical possibility of such a move.¹ And although the June 2018 investigative
6 findings by the Attorney General's office in Playa del Carmen are helpful to Father's
7 position, it's not clear that the Attorney General's office was aware of the serious
8 allegations contained in the email from Father's relative (which was sent in August 2018)
9 at the time it issued those findings. As previously noted, a TRO "is an extraordinary
10 remedy never awarded as of right" and should "not be granted unless the movant, by a clear
11 showing, carries the burden of persuasion." (Doc. 9 at 2, citations omitted.) Those
12 standards continue to preclude Father's request for emergency injunctive relief.

13 The Court also notes that, in paragraph 26 of the motion, Father asserts that "[o]n
14 May 1, 2019, the Court issued a summons, but the document was not uploaded to the ECF
15 system and Father has not received an electronic copy of the summons. As a result, Father
16 cannot serve Mother with the Petition." The Court will thus order the Clerk of Court to
17 reissue² the summons electronically, so that Father may print it out, arrange for Mother to
18 be served, and then provide proof of service to the Court. As noted in prior orders, the

19 ¹ Compare *Morgan v. Morgan*, 289 F. Supp. 2d 1067, 1070 (N.D. Iowa 2003)
20 (granting TRO where father presented evidence that "it is the intention of [mother] to take
21 the child out of Iowa in the very near future; and that if a temporary restraining order is not
22 issued *ex parte*, [mother] will likely flee this jurisdiction with the child upon receiving
23 notice of [father's] intent to seek a temporary restraining order preventing them from doing
24 so"); *Application of McCullough on Behalf of McCullough*, 4 F. Supp. 2d 411, 413 (W.D.
25 Pa. 1998) (granting TRO application where Canadian father presented evidence that
26 mother had recently stated, during a phone call, "that the 'end time' was near and that she
27 and their children would not be returning to Canada. [Father] understood the reference to
28 the 'end time' as a statement which related to his wife's religious beliefs . . . that [her] sect
must be ready to flee to Petra, Jordan if and when the church's leader directs.
Apparently, adherents believe that only by escaping to Petra will God save them from an
apocalyptic event.").


26 ² On May 1, 2019, the Clerk of Court processed Father's request for a summons. At
27 that time, Father (who is proceeding *pro se*) did not yet have access to the CM/ECF system.
28 Accordingly, the Clerk mailed a copy of the summons to Father's address in Colorado
(which Father provided at the outset of the case) instead of making it available via
CM/ECF. Now that Father's request for electronic access has been granted, the reissuance
of the summons on CM/ECF will give him the immediate ability to access it.

1 Court will give this matter expedited consideration once such proof of service is provided.

2 Accordingly, **IT IS ORDERED** that Father's "Ex Parte Motion for an order for the
3 Children to Remain in the State of Arizona" (Doc. 10) is **denied**.

4 **IT IS FURTHER ORDERED** that the Clerk of Court shall reissue the summons
5 as to Bonnie Jeanene Kendrick and make the reissued summons available via CM/ECF.

6 Dated this 6th day of May, 2019.

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11 Dominic W. Lanza
12 United States District Judge
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